

07.06.2022

Item No.52
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 1787 of 2021

**Bahar Shaikh @ Bahar Sk.
versus
State of West Bengal & Ors.**

In Re: An Application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

Mr. Shibaji Kumar Das,
Mr. Amanul Islam,
Mr. Sourav Mukherjee,
Ms. Rupsa Manna ... For the Petitioner.

Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan ... For the State.

Mr. Asraf Mandal ... For the private Opposite Parties.

Supplementary affidavit filed on behalf of the petitioner
be kept on record.

Report submitted by Mr. Arijit Ganguly, learned
advocate appearing for the State be kept on record.

Report reflects that neither U.D. case was registered
relating to the death of the deceased nor any other case was
registered as it seems from the report submitted by the
Officer-in-Charge, Thanarpara Police Station.

I have perused the order dated 04.08.2021 passed by
learned Additional Chief Judicial Magistrate, Tehatta.
Learned Court has emphasised on the judgment of Priyanka
Srivastava Vs. State of Uttar Pradesh reported in (2015) 6
SCC 287. In the same breath at the concluding paragraph,
the learned Magistrate has observed that “the allegation is
very serious in nature and before passing order directing to

lodge FIR against the accused persons for such serious offence, it is very much necessary to peruse the post mortem report for deciding whether the death was suicidal or homicidal in nature". However, the learned court thereafter rejected the application under Section 156(3) of the Code of Criminal Procedure.

I find that the learned Magistrate failed to balance the technicalities and the seriousness of the offence and was not sure whether the application under Section 156(3) of the Code of Criminal Procedure made out an offence for investigation or not. In such cases where a complainant is unable to produce any document, it is the duty of the court for ends of justice to call for a report from the police authorities for assessment of the ground reality whether any offence has been made out or not and then decide whether for furthering the case a direction for investigation should be passed or not. A litigant or an affected party may not have the resources to produce all the documents or witnesses at the relevant time when a case is presented before the learned Magistrate. The courts therefore are required to assess the ground reality which includes the limited resources of the complainant, the ability to get supporting witnesses without the aid of the police authorities, the documents which are in the custody of the public offices and the circumstances or the motive which can only be found out by way of an effective investigation.

In view of the aforesaid, the petitioner is granted liberty to file a fresh application wherein the contents would be same as was earlier filed before the learned ACJM, but the affidavit must be exhaustive declaring the source of knowledge under three heads – (i) belief, (ii) records and (iii) submissions.

Accordingly, the order dated 04.08.2021 passed by learned Additional Chief Judicial Magistrate, Tehatta is set aside.

The revisional application being CRR 1787 of 2021 is allowed.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)